

REMARKS

Claims 30-33, 35, and 37-46 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claims 30-33 and 44-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lupien et al. (U.S. Pat. No. 5,845,266) (hereinafter "Lupien" or "the Lupien reference") in view of Sposito (U.S. Patent Publication No. 2001/0042033 A1) (hereinafter "Sposito" or "the Sposito reference"). This rejection is respectfully traversed.

Attached is a Declaration provided pursuant to 37 C.F.R. § 1.131 for establishing a conception of the claimed invention in the United States prior to January 14, 2000, which is the filing date of the Sposito reference. Therefore, the Sposito reference is not available as a prior art reference under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claims 30-33 and 44-46 under 35 U.S.C. § 103(a).

Claims 35-36 and 37-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lupien (U.S. Pat. No. 5,845,266) in view of Kane (U.S. Pat. No. 6,317,728) (hereinafter "Kane" or "the Kane reference"). This rejection is respectfully traversed.

Claim 36 is withdrawn. Independent claims 35 and 37 have been amended to more positively reflect that they are directed to a process for automated trading a

security through a brokerage computer system in communication with a client computer system (claim 35). In claims 35 and 37 a "brokerage having a brokerage computer system" or a "brokerage" comprising a "brokerage computer system" is provided.

Neither Lupien nor Kane describe a system for receiving to a "brokerage computer system" a computer implemented decision model; inputting data into the decision model at the brokerage computer system; monitoring the decision model at the brokerage computer system; and if a decision to buy or sell is reached, determining if the transaction is appropriate and if so, automatically submitting from the brokerage computer system to "a market computer system" an order to buy or sell the security. These steps are missing from Lupien since Lupien discloses "an automated crossing network (also known as a matching)" (Col. 1, lines 7-8) not a brokerage with an automated trading system for trading securities with a market as claimed in claims 35 and 37.

Lupien distinguishes a crossing network from placing trades with a broker. "Traditionally, traders and investors who desire to buy or sell securities placed orders with brokers who traded on the floor of organized stock exchanges, such as the New York Stock Exchange or the NASDAQ market." (Col. 1, lines 24-27). "Discontent with the expense of using intermediaries and the cost of market impact has contributed to the development of the electronic fourth market for crossing trades." (Col. 1, lines 31-33). Lupien goes on to describe various crossing networks "to match buyers and sellers anonymously" (Col. 2, lines 1-2). Therefore, the crossing network of Lupien functions as a "market" for buying and selling securities between participants in the crossing network and is not a brokerage.

A crossing network as disclosed in Lupien has similarities to any automated "market" system for securities. A market system is inherently different from a network accessible brokerage comprising a process for automated buying and selling of securities through a market apart from the network accessible brokerage itself. In Lupien once the crossing network makes a decision to buy or sell there is no need to place an order to a separate market and monitor the fulfillment of the order since the crossing network is the market. Conversely, claims 35 and 37 are directed to a trading system that interacts with a market but does not create a market.

Another inherent difference between the crossing networks disclosed in Lupien and the automated trading system of claim 35 is the lack of necessity and disclosure in Lupien of a system that will receive a decision model to buy a security and a decision model to sell the same security and monitor both decision models for the decision to buy and/or sell. As disclosed in Lupien, a satisfaction density profile is created "that as a whole characterizes the trader's degree of satisfaction for a transaction at each (price, size) coordinate." (Col. 4, lines 5-11). Lupien does not disclose, nor is it clear how this system could be used to both buy and sell the same security for the same client based on concurrently active buy and sell satisfaction density profiles where each satisfaction density profile is based on a price and size coordinate. In fact, if a concurrent buy and sell "satisfaction density profile" for the same security for the same client is executed according to Lupien, the crossing network could arguably require the client to buy and sell to itself the security if the buy and sell satisfaction density profile required. This illogical result is inherently undesirable. Lupien does not teach or suggest a system for buying and selling the same security based on a buy decision model and a sell decision

model being monitored at the same time. For these reasons Lupien does not disclose the claimed steps of taking action if a buy decision is reached and/or a sell decision is reached through monitoring both a sell decision model and a buy decision model for the same security by the same client.

Further, Lupien does not disclose consideration of whether a trade is appropriate after a decision to buy or sell has been made. The Examiner points to the abstract of Lupien and a statement therein, that it "accommodates stock exchange rules" as supporting that Lupien has a process for determining if a transaction to buy or sell the security is appropriate. This claim element of claim 35 has been amended to further clarify that the transaction approval process determines if the transaction to buy or sell the security is appropriate "after a decision is made to buy or sell the security." Lupien does not disclose any further consideration of whether the trade is appropriate after the decision to buy or sell a security is made. This additional step is not necessary in a market system such as the crossing network of Lupien.

Further, Lupien does not disclose or suggest "continuing inputting data into the decision models, monitoring the decision models through the monitoring process, and repeating the steps if the buy decision is reached or the sell decision is reached until the process is stopped." (see claim 35). In Lupien, "when the maximum sized limit for a particular satisfaction density profile is reached, all remaining lower rank grid elements involving the profile are removed from consideration." (Col. 11, lines 7-10). In other words in Lupien once the desired outcome is reached and the order is filled the system stops buying or selling a particular security according to the satisfaction density profile. Further, "if all feasible crosses have been completed, then the process is temporarily

suspended until the next order is entered or an existing unmatched order is cancelled or modified . . . " (Col. 11, lines 12-15). Neither claim 35 nor 37 have such a limitation. This again is an inherent difference between the crossing networks disclosed in Lupien and the automated trading system of claims 35 and 37.

The disclosure of Kane is also distinguishable from the instant invention. In Kane, the disclosed security trading system sends orders to buy or sell a security to a broker. In other words, the security trading system of Kane is not integrated into a brokerage computer system as required in independent claims 35 and 37. In Kane, "the result of the vote is transmitted via one of the 'buy long' data channel 12 or the 'sell short' data channel 13, and the decision is executed in the executing device 11, which transmits the corresponding order via an appropriate data channel, such as an internet data connection 27, stock exchange data connection 28, or a data channel 29 to a broker." (Emphasis Added)(Col. 5, lines 49-57). In the instant invention, it is not necessary to transmit an order to a broker since the system itself is incorporated into a brokerage computer system. The Kane disclosure further explains this distinction by stating that "Wealth Wizard™ places the order with the broker or a specialist through either internet or direct connection, and waits for the confirmation from the broker." (Emphasis Added) (Col. 7, lines 35-37). Therefore, Kane does not disclose or teach the steps of inputting data into a decision model on a brokerage computer system, monitoring the decision model on the brokerage computer system and submitting an order to buy or sell the security from the brokerage computer system to a market computer system if a buy or sell decision is reached as is required in claims 35 and 37.

Finally, notwithstanding the clear distinguishing features of the disclosure in Lupien and the disclosure in Kane from the instant invention, there is no suggestion in either of these references of combining their disclosures nor would any attempted combination disclose the invention of claims 35 or 37. Further, it is not clear how any such combined system would work or even if it would work since Lupien and Kane are directed to different systems serving different purposes.


For these reasons, neither Lupien nor Kane, either individually or in combination disclose or teach each of the limitations of claims 35 and 37-43. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 35 and 37-43 under 35 U.S.C. § 103(a) as being unpatentable over Lupien in view of Kane.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: 12/17/2003

By: 
Dean W. Amburn
Reg. No. 46,517

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600